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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,277	04/21/2005	Andrea Drollinger	14150	8515
<div>Orum &amp; Roth 53 West Jackson Blvd Chicago, IL 60604-3606</div>				
<div>7590      01/29/2008</div>			<div>EXAMINER KAVANAUGH, JOHN T</div>	
			<div>ART UNIT 3728</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE 01/29/2008</div>	<div>DELIVERY MODE PAPER</div>

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/532,277	Applicant(s) DROLLINGER ET AL.	
	Examiner /Ted Kavanaugh/	Art Unit 3728	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 December 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) 6-10, 12-22 and 28-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 11, 23-27 and 44-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment to the claims filed on Dec. 10, 2007 does not comply with the requirements of 37 CFR 1.121 because the text of the "withdrawn" claims has not been included. Also, there are several claims labeled "Previously Presented" which have been amended and therefore should have the status identifier of "Currently amended". if the application was allowed, it could not move forward for issuance in this condition. Since the application is not being allowed, the amendment is being entered and considered by the examiner but for the future the text of the withdrawn claims must be included and the identifiers must be correct.

### ***Drawings***

2. The drawings were received on Dec. 10, 2007. These drawings are approved by the examiner.

### ***Claim Rejections - 35 USC § 112***

3. Claims 1-5,11,23-27,44-56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the phrase "mounting elements which are movable at all times" is inaccurate, unclear and indefinite. In the elected embodiment figure 8, the "mounting element" is the pin "43", see page 14,line 23 of the specification. The pin is not movable and even furthermore is not movable at times. Perhaps, applicant was trying to refer to the heel shaped support (38) and the plate shaped support (39). These

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plates are also not movable at all times; especially when the ground engaging elements make a secure engagement with the ground.

In claims 44 and 45, the "slide" lacks proper antecedent basis. Also, it is not clear which element in the elected species IV (figure 8), if any, represents the slide. This rejection is repeated from the last office action and hasn't been addressed by the applicant.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

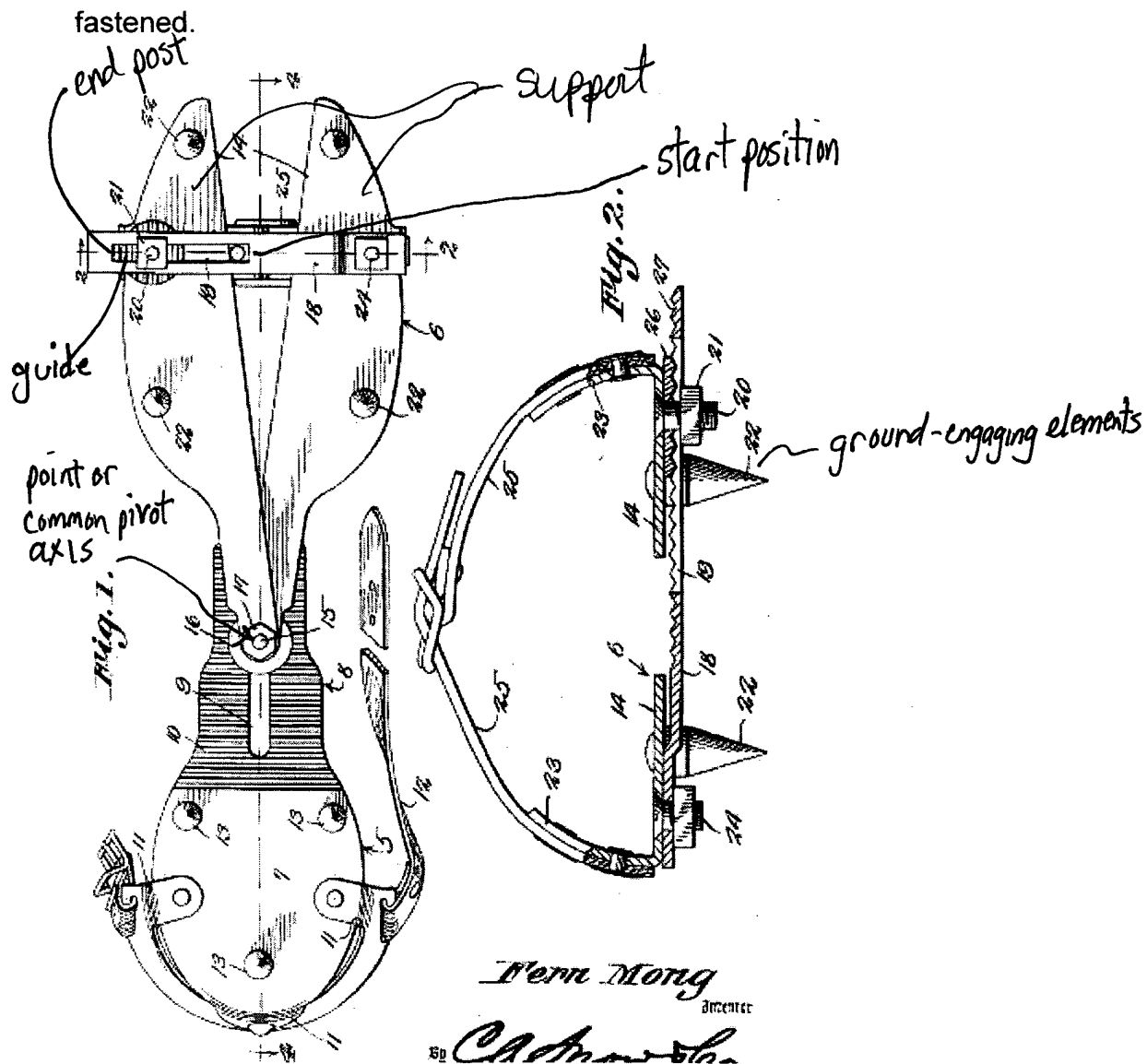
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5,11,25-27,48-56 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2002706 (Mong).

Mong teaches an ice creeper (sole with downwardly projecting ground elements) which is detachably mounted on a shoe, wherein the ice creeper has two support plates with ground-engaging elements which are guided and held to move forward and backward along an arc; see the marked-up figure below. The shoe can inherently be used for sports. The center of curvature is about the bolt 15 which is between the heel and the forefoot of the shoe. The mounting elements could be the bolt and nut (15,17) which are capable of being movable at all times inasmuch as anyone could thread or thread them together. Also the mounting means could be the toe section members

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(14,14) which are also movable at all times when the bolts and nuts are not tightly



6. Claims 1-5,11,46,47 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6035559 (Freed).

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Freed teaches a sports shoe (see figure 13) with downward ground engaging elements extending from a support (6) wherein the ground-engaging elements, are guided and held to move forward and backward along an arc (the plate 6 rotates) and moves back to its original position by means of a return spring (118). See figure 22 and 23 for different variations which have at least two supports. The mounting element, as understood, is represented by the projections (120) and/or turntable 6 which are both movable at all times. The center of curvature is at the center of the turntable 6 which is in the forefoot area of the shoe and therefore "is located between the heel portion and the forefront of the shoe" as claimed.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 23,24,44,45 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of the following references: Mong and Free.

All of the shoes as taught above don't specifically teach the support, the slide and the sole made out of plastic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the support, the slide and the sole out of plastic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

***Response to Arguments***

9. Applicant's arguments filed 12/10/2007 have been fully considered but they are not persuasive.

Applicant argues that "none of the cited references taken along or in combination disclose ground engaging elements which rotate about a point located between the heel and forefront of the shoe, as currently claimed".

To the contrary, the area claimed would basically include all points on the shoe except for the extreme tip (the toe area) and the extreme back or rear of the shoe.

Applicant argues that Mong has no constantly movable elements.

In response, see the indefinite rejection and the art rejection of Mong, both applied above.

Applicant argues that the device of Freed does not rotate in the manner similar to the presently claimed invention.

This argument is not understood since clearly the turntable 6 of Freed rotates; taught throughout the written description inasmuch as the pivoting rotation of the plate is the crux of the invention.

10. Applicant's remaining arguments are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

**12. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including:**

**--“The reply must present arguments pointing out the *specific* distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.”**

**--“A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.”**

**-Moreover, “The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims. Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06” MPEP 714.02. The “disclosure” includes the claims, the specification and the drawings.**



13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571) 273-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Ted Kavanaugh whose telephone number is (571) 272-4556. The examiner can normally be reached from 6AM - 4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

/Ted Kavanaugh/  
Primary Examiner  
Art Unit 3728

TK  
January 18, 2008